

MEETING MINUTES

MILPITAS PLANNING COMMISSION Milpitas City Hall, Council Chambers 455 E. Calaveras Blvd., Milpitas, CA

Wednesday, January 14, 2015

- I. PLEDGE OF ALLEGIANCE** **Chair Mandal** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II. OATH OF OFFICE TO NEWLY APPOINTED MEMBERS** City Clerk Mary Lavelle swore in new members Zeya Mohsin and Ray Maglalang.
- III. ROLL CALL/ SEATING OF ALTERNATE** **Commissioners**
Present: Chair Sudhir Mandal, Vice Chair Larry Ciardella, Commissioners Gurdev Sandhu, Rajeev Madnawat, Demetress Morris, Hon Lien, Ray Maglalang, Alternate Member Zeya Mohsin
Absent:
Staff: Steven McHarris, Johnny Phan, Adam Petersen
- IV. PUBLIC FORUM** **Chair Mandal** invited members of the audience to address the Commission and there was one speaker.

Rob Means, a Milpitas resident who lives on Yellowstone, said he is circulating a petition rejecting US Supreme Court rulings regarding money interests and invited commissioners to join him for a protest march in San Francisco at 3:30 on January 21st.
- V. APPROVAL OF MEETING MINUTES** **Chair Mandal** called for approval of the December 10, 2014 meeting minutes of the Planning Commission.

Motion to approve Planning Commission meeting minutes as submitted.
Motion/Second: Commissioner Madnawat/Commissioner Morris
AYES: 4
NOES: 0
ABSTAIN: 3 Ciardella, Sandhu, Maglalang
- VI. ANNOUNCEMENTS** Planning Director Steven McHarris announced that the Holiday Inn Suites and Springhill Suites items were deferred to February 11.

Romero Rodriguez, a resident on Fairview Way, was present to speak about these projects. He said the land has been vacant for several years and as a home owner he believes the hotels will be a big boost to their property values and that they will create more pedestrian activity for the businesses located there.

Anna Capelias said her concern has to do with use and zoning of the development and what changes might occur if a hotel is allowed, and she wants to hear all of the information when the presentation is made.

Mr. McHarris said the zoning is not changing and that hotel use can occur with approval of the planning commission. The projects will be heard at the February 11 Planning Commission meeting.

VII. CONFLICT OF INTEREST

Assistant City Attorney Johnny Phan asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.

There were no reported conflicts.

VIII. APPROVAL OF AGENDA

Chair Mandal asked if staff or Commissioners had changes to the agenda and there were none.

Motion to approve the January 14, 2015 agenda as submitted.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

IX. CONSENT CALENDAR

NO ITEMS

X. PUBLIC HEARING

X-1

TOWN CENTER AMENDMENT – ALL TOWN CENTER DESIGNATED PARCELS – ZA14-0011: Zoning Text Amendment to the Town Center zoning district that would add a description and prohibit ground level residential uses.

Project Planner Adam Petersen reviewed a PowerPoint presentation discussing the zoning amendment.

Commissioner Madnawat asked if a garage is considered residential, because if so there could be an easy way to get around the amendment by building garages on the ground floor. Mr. McHarris said that residential serving garages would be classified as residential and would not be permitted on the ground floor, and that there has to be commercial on the ground floor. Commissioner Madnawat said this would mean there would be no condominium development and Mr. McHarris said that was correct. Commissioner Madnawat said the language in the ordinance should be clearer about permitted uses and should state that the ground floor needs to be 100% commercial.

Assistant City Attorney Johnny Phan said the drafted language can be updated to clarify the types of uses allowed.

Chair Mandal asked about the process of attracting high quality businesses to Milpitas and the vision for the city to produce more walkable and lively areas and Mr. Petersen said the intent of this amendment is to encourage future uses that accommodate that type of use.

Chair Mandal opened the public hearing and Mr. Means spoke in favor of this

amendment.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked that the language in the ordinance be clarified to include permitted uses around the word commercial and that staff look into potential conflicts with the ordinance that allow live-work units.

Motion to adopt Resolution No. 15-001 recommending the City Council adopt Zoning Amendment No. ZA14-0011 to add the words “mixed use” residential to the purpose and intent section of the Town Center Zoning description and to prohibit ground floor residential in the Town Center zone.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

X-2

GENERAL PLAN CONVERSION - CLARIFICATION – CITY WIDE – GP14-0005: Clarification to the adopted General Plan Land Use Conversion policy (City Council Resolution No. 8220), removal of the exemption for parcels on the west side of McCarthy Boulevard north of Highway 237 and properties on the east side of California Circle to Penitencia Creek.

Senior Planner Adam Petersen provided a presentation reviewing the project.

Commissioner Sandhu asked how large the parcel is and Mr. Petersen said it is approximately 10 acres.

Commissioner Madnawat asked if there are pending applications and Mr. McHarris said there are not.

Chair Mandal opened the public hearing and Mr. Means said that this generally sounds like a good idea and was curious about the remnant parcel and who the owner is.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked if there is any interest on the parcel and Mr. McHarris said there are no pending applications. Mr. Petersen added that the owner is listed as BAPS San Jose LLC.

Motion to adopt Resolution No. 15-002 to recommend the City Council adopt a resolution rescinding Paragraph Number 7 in Resolution No. 8220 relating to

conversion of employment/sales tax generation properties to residential, while considering to continue exempting parcel APN 022-37-019 in order to achieve a consistent land use pattern in the area.

Motion/Second: Commissioner Madnawat/Commissioner Sandhu

AYES: 7

NOES: 0

X-3

CITATION PROJECTS DEVELOPMENT AGREEMENT – TASP PIPER/MONTAGUE DRIVE SUBAREA – DA14-0001: Development Agreement proposal for reduced TASP Fees for all Citation Developments.

Senior Planner Adam Petersen provided a presentation reviewing the project.

Three commissioners disclosed that they had met with the developer: Vice Chair Ciardella, Chair Mandal, and Commissioner Morris.

Commissioner Madnawat asked how the TASP fees are calculated and Mr. Petersen said that \$32,781 is the cost per unit to install infrastructure including roads, sewer and water within the TASP area. Commissioner Madnawat asked if this is a reasonable amount the City will need to spend to provide infrastructure for these homes and Mr. McHarris said it is.

Commissioner Madnawat referenced a bullet point in the presentation stating the builder has provided \$8 million worth of benefits and asked for two examples of those benefits provided that have nothing to do with their development. Mr. McHarris said the developer fronted that amount of money to enable development of the TASP area, not just for their development but to enable the development of the TASP area. He said infrastructure needed to go in and Citation stepped up to do that and also processed three projects consistent with the transit area.

Commissioner Madnawat asked what amount of the \$8 million is the amount not adding value to their project and Mr. McHarris said it does add some value to their project but also adds value to all of the projects within this sub-area of the TASP.

Commissioner Madnawat said he feels this is for the developers own benefit and that it is a \$3.8 million dollar gift to the builder. He said if \$32,781 is the fair amount that the City will have to spend then that means the taxpayers will have to pay \$3.8 million to provide those services and he has a problem with this.

Commissioner Lien asked if there was a recent fee increase and Mr. McHarris said there have been two fee adjustments in addition to the annual adjustment and that the fee is calculated at the time the project is developed not entitled.

Commissioner Maglalang said he was trying to understand the \$8.3 million infrastructure improvement cost and if this is supposed to be a City expense or an obligation by the developer. Mr. Phan said there are three developers building in the Piper/Montague sub-district of the TASP, Citation being the largest developer in that area and building over 1,000 units. Potentially Barry Swenson will build 300-400 units and also Milpitas Station.

With these three developers over 1,500 units will be built and there is significant public improvement required, none of which are City obligations. These public improvements

total about \$10 million and have to be built by the developer. A few years ago the City Council approved a four-party cost sharing agreement between the City, Citation, Barry Swenson and Milpitas Station. Citation is the first developer to come in and is going to front and build most of the improvements, going above and beyond their obligation. They will receive credit and when the other developers come in to build they will pay the City back.

Commissioner Morris asked if development fees can be grandfathered in and Mr. Phan said the city does not grandfather anyone's fees. Fees are based on inflation and updated studies and may be adjusted during the planning process and the fee was \$29,000 when Citation submitted their application and \$32,721 when the building permit was issued.

Commissioner Madnawat referenced the four-party contract and wondered why Citation doesn't request the money from the other developers, and what guarantee is there that they will reimburse the city. Mr. Phan said there is a mechanism for the City to collect from the developer, that a CFD can be created if they do not build within seven years and pay their fees.

Chair Mandal asked if there will be a park and Mr. Petersen said there will be one constructed by the Citation project and showed the location of the park. He asked about the five year freeze on the fees and Mr. Phan explained that the development agreement is drafted so that within the first five years the TASP fee stays at \$29,012 per unit if they build and pay their full TASP fees but if they build after five years then the fee is adjusted for inflation and increased parkland value.

Commissioner Madnawat asked if fees are frozen when a permit is pulled and Mr. Phan said that the City's position is that fees are not vested and not frozen when a permit is pulled but this has been an ongoing dispute with developers. Commissioner Madnawat said the TASP fee is needed to provide infrastructure and should be non-negotiable. He said someone has to pay this and it should not be the taxpayers of Milpitas, and he sees this a \$3.8 outright gift to the developer. He wants to see the cost sharing agreement and feels that some commissioners may not understand this topic.

Commissioner Maglalang is afraid that giving a fee reduction will create a bad precedence for other developers to ask for the same fees given to Citation.

Applicant Mark Tiernan, who is also a resident of Milpitas, wanted to clarify a few points about the rationale behind the development agreement: 1) they are building at the highest level of density allowed, 2) although the City asked them to provide 5,000 square feet of retail space they are providing 8,100 square feet of retail space, and 3) when Citation 1 was approved the fees were \$23,700 which was the dollar amount the City and consultant said was needed to provide the infrastructure to support these projects. By the time they got plans approved and went through the process the fees were raised to now almost \$32,800 and they have asked for a compromise in return for building what the City has described as a signature project which is the Edge.

Mr. Tiernan said the first project they are building is 381 units and will take two years to build and another 1-2 years to fully lease out. Normally a developer would wait to have a building fully leased before building another project because you don't want to compete with yourself, and their plan was to move from Amalfi 1 to Amalfi II to the Edge. When they came for approval of the Edge, the City Council felt this was an important project and that it was important to coincide with the BART station, and they entered into discussions with the City to move forward before Amalfi I is fully leased out, increasing their risk, and they asked for a compromise in the fees in return for

building what the City would describe as a signature project.

He said that other developers could ask for the same deal and the City could ask them if they are building at the highest density, providing more commercial space than required and are they willing to invest 250 million in the City to get their projects built. He said if the answer was yes to those questions, then the City would probably move forward with a development agreement because of the role the developer is playing.

Mr. Tiernan said the TASP is one of the most important transit housing opportunities in the Bay Area and Citation Homes has made this one of their signature projects. The City would like them to build this project to coincide with the BART station and with the increases in construction and material costs they would like to get some cost certainty in their fees to reduce some of their risk and start construction on a building before their other project is fully leased out.

Commissioner Madnawat said Mr. Tiernan's argument regarding requests from other developers does not hold water but that his argument for the fee increases does and said he was surprised by the huge increase in the fees and asked the reasons for such an increase. Mr. Phan said there is a formula and consultants conduct a Nexus study and look at a number of different factors to determine the fair share amount for each unit. He said the initial fee study done in 2008 was based on the plan that was adopted but has been updated based on new trends and information.

Commissioner Madnawat said that if the \$32,781 reflects what the City is going to spend it is \$3.8 million coming from the City which can be spent on hiring police officers, fire fighters, and others.

Chair Mandal opened the public hearing and there were two speakers. Rob Means said this is a great project and reviewed a list of benefits to the City that he believes offsets the \$3.8 million, including a high density housing project, extra retail, and a pedestrian over crossing getting built early.

Jim Sullivan, a consultant for the developer, said he was the project proponent for the Edge. He said developers were building on the low density side but they transferred another developers units onto the Edge and built 94 more units than necessary. He said they are also working with staff to build a great public park in the area at a substantial discount than what it would cost the city to build.

Motion to close the public hearing.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

Commissioner Madnawat asked who is building the pedestrian bridge and Mr. McHarris said it is a City project and there is currently grant funding for the design work and VTA is preparing design work for the City.

Motion to adopt Resolution No. 15-003 recommending the City Council adopt an ordinance approving a development agreement vesting the Transit Area Specific Plan fees for the Citation I and Citation II Projects: Amalfi I, Amalfi II and the Edge.

Motion/Second: Commissioner Morris/Commissioner Lien

AYES: 4

NOES: 3 Sandhu, Madnawat, Maglalang

XI. NEW BUSINESS

NO ITEMS

XII. ADJOURNMENT The meeting was adjourned at 9:10 PM to the next meeting scheduled on Wednesday, January 28, 2015.

Motion to adjourn to the next meeting.

Motion/Second: Commissioner Madnawat/Vice Chair Ciardella

AYES: 7

NOES: 0

ABSENT: 0

*Meeting Minutes submitted by
Planning Secretary Elia Escobar*